

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. SCHLIFER,

Defendant.

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ORDER

04-cr-59-bbc-01

Defendant James T. Schlifer has written a letter asking for information about his qualification for an additional reduction in his sentence under 18 U.S.C. § 3582. (He has had his sentence reduced once, in 2005, after the court of appeals remanded his case for resentencing in light of United States v. Booker, 543 U.S. 220 (2005).) He seems to think that he may be eligible for a reduction under § 3582 because of the change in the guideline governing the calculation of criminal history points for offenses that are consolidated for sentencing. U.S.S.G. § 4A1.2(a)(2). At the end of the letter, he asks for appointment of counsel to help him pursue a reduction. I construe this request as a motion.

The new version of § 4A1.2(a)(2) simplifies criminal history calculations by treating two prior convictions as one if the resulting sentences were imposed on the same day,

provided that the two offenses were not separated by an arrest. Defendant contends that if this change applies to him, his criminal history score would be reduced and he would no longer be considered a career offender within the meaning of § 4B1.1(b).

It is not necessary to determine whether defendant is correct in his view that if he were to be sentenced today under the new guideline he would not be considered a career offender. The Sentencing Commission did not make the change in § 4A1.2(a)(2) retroactive so it does not apply to sentences that became final before the amendment was promulgated. Defendant was sentenced for the first time almost four years ago and resentenced about three years ago. This second sentence became final in 2005, long before § 4A1.2(a)(2) took effect on November 1, 2007. (Defendant attached a per curiam opinion from the Court of Appeals for the First Circuit, remanding a case to the district court to reconsider the defendant's sentence under the new guideline. United States v. Godin, 489 F.3d 431 (1st Cir. 2007). Godin does not help defendant because Godin's sentence had not become final before the change in the amendment, whereas defendant's had.)

Because defendant does not qualify for a reduction in his sentence under § 3582 and § 4A1.2(a)(2), it would be futile to appoint counsel to represent him in pursuing such a reduction. Therefore, his motion will be denied.

ORDER

IT IS ORDERED that defendant James T. Schlifer's motion for appointment of counsel to help him file a motion for a reduction in his sentence under 18 U.S.C. § 3582 is DENIED.

Entered this 7th day of July, 2008.

BY THE COURT:

*Barbara B. Crabb*

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BARBARA B. CRABB  
District Judge